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To: Ram R. Shukla

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From: David L. Bernstein, Reg. No. 31,235  
ARIAD Gene Therapeutics, Inc.  
26 Landsdowne St.  
Cambridge, MA 02139

Facsimile No: 617-494-0208

Telephone No: 617-494-0400 x266

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Attached please find a Response to Communication and a Request for a One-Month Extension of Time.

Application Number : 09/407,402  
Filing Date : September 28, 1999  
Group Art Unit : 1632  
Applicant : Natesan & Gilman  
Title : Chimeric Transcription Factors

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26 LANDSDOWNE STREET • CAMBRIDGE, MASSACHUSETTS 02139-4234 • TELEPHONE 617 494 0400 • FACSIMILE 617 494 0208

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ARIAD 346E US

**In The United States Patent And Trademark Office**

Serial No. 09/407,402  
Filing Date 9/28/99  
Inventors Natesan & Gilman  
For Chimeric Transcription Factors

Art Group: 1632

Examiner: Shukla, Ram R.

By fax: 7 308-4242  
Commissioner of Patents  
PO Box 1450  
Alexandria, VA 22313-1450

July 29, 2003

**Request for One Month Extension & Response to Communication**

This is in Response to the Communication mailed on 5/30/03, a response to which was originally due on 6/30/03. Applicants hereby request a one-month extension for responding and authorize the Commissioner to charge the fee for such extension to Deposit Account No. 09-2315. The new deadline is now 7/30/03, and this response should be considered timely filed.

**Amendment and Remarks**

Applicants apologize for the oversight in failing to address the §112, second paragraph issues raised in the last Office Action, and thank the Examiner for the opportunity to correct this.

The word "comprising" was cited as the basis for a §112, 2d paragraph rejection on the grounds that it is unclear whether an open or closed meaning is intended. Replacement with "comprising" or "consisting of" was suggested. Applicants respectfully traverse that ground for rejection, since "containing" is an acceptable and accepted term for use in claims and is synonymous with "comprising". Accordingly, no amendment is required. See MPEP 2110.3 Transitional Phrases:

The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps. *Molecular Research Corp. v. CBS, Inc.*, 793 F.2d 1261, 229 USPQ 805 (Fed. Cir. 1986); *In re Baxter*, 656 F.2d 679, 686, 210 USPQ 795, 803 (CCPA 1981); *Ex parte Davis*, 80 USPQ 448, 450 (Bd. App. 1948) ("comprising" leaves "the claim open for the inclusion of unspecified ingredients even in major amounts").

Claims 39, 40 and 49 – 51 have been amended (see attached) to replace the "capable of" terminology. This language change is being made solely to advance prosecution, rather than in acquiescence to the position taken in the Office Action, and no change in meaning is intended by the amendments. These amendments should, however, render moot the remaining §112, 2d paragraph issue.

USPN: 09/407,402

Attorney Ref: 346E U

**Conclusion**

Again, applicants appreciate the Examiner's time and thought on this important case. The case is now considered to be in condition for allowance, which is respectfully requested at this time. If it might be helpful in answering any questions or otherwise advancing prosecution, applicants again invite the Examiner to call their attorney at the number provided below in the hope that agreement can be reached on the allowance of the pending claims.

Respectfully submitted,



David L. Bernstein, Reg. No. 30,035  
ARIAD Pharmaceuticals, Inc.  
26 Landsdowne Street  
Cambridge, MA 02139

phone: 617-494-0400 ext 206


fax: 617-494-0208

e-mail: [david.berstein@ariad.com](mailto:david.berstein@ariad.com)

**CERTIFICATE OF MAILING UNDER 37 C.F.R. §1.8(a)**

I hereby certify that this correspondence is being faxed to the US PTO on the date indicated below:

date: July 29, 2003

  
Sue Wilson